

An item of pending business before Congress when it returns from recess will be conference committee action on the "Ervin bill" rider to the Civil Rights Commission legislation. The CSC is tackling the sticky procedural issue of "germaneness." If this issue is lost and the Ervin bill will remain in some form they will press for amendments which will include specific exemptions for CIA, NSA and the FBI.

Former Representative now Judge Poff spoke to Chairman Celler about our particular problems with the bill and Poff along with the staff of the Post Office and Civil Service and Judiciary Committees recommend that you address correspondence along the lines of the attached letter to Celler to make this a matter of record. Our letter was reviewed by the CSC which has no objection to it and I have coordinated it with the DDS and OGC. We also plan to ask Chairmen Hebert and Mahon to speak to Celler on our behalf.

ERVIN BILL HANDOUT

- A. Chronology & Status of the Bill
- B. One-Page Summary of Effect on CIA
- C. More Detailed Analysis
- D. Hampton Letter to Celler
- E. Legislation (H. R. 12652)

11 September 1972

CHRONOLOGY & STATUS OF ERVIN BILL
(Constitutional Rights of Government Employees)

On 8 December 1971, S. 1438, which was reported by the Senate Judiciary Committee on 6 December 1971, was approved by the Senate, without debate.

The bill was referred to the Hanley Subcommittee of the House Post Office and Civil Service Committee, which, unlike the Senate Constitutional Rights Subcommittee, took extensive current testimony which led to the introduction of a clean bill, H. R. 11150, specifically exempting CIA, NSA, and FBI and making some, but not all, of the changes sought by the Civil Service Commission. The Hanley Subcommittee has not formally acted on the matter, however.

On 4 August 1972, the substance of S. 1438 was once again approved by the Senate as a rider to legislation extending the Civil Rights Commission, H. R. 12652 (attached). On 16 August, the House requested a conference with the Senate on H. R. 12652 and appointed Representatives Celler, Brooks, Hungate, and Hutchinson as conferees. The Senate has yet to appoint its conferees:

--Chairman Hampton has strongly opposed the adoption of the Ervin bill rider in a letter to Chairman Celler (attached).

--Apparently, Celler has agreed to Senator Ervin's request for an up or down vote in the House on the legislation. This could come in the form of a test under the rule of germaneness when the conference report is submitted for approval to the House.

--It is understood that the Civil Service Commission, as a fallback position, has prepared amendments to alleviate objectionable features from the legislation. The amendments would exempt from the legislation CIA, NSA, and FBI.

--The Ervin bill (1) authorizes direct access to the courts by a complaining applicant or employee without the need to first exhaust administrative remedies (the Judicial Conference has strongly opposed this feature in the past), and (2) makes the alleged offending supervisor personally liable in a suit which could result in a reward of monetary damages. (The mere threat of personal law suits would obviously inhibit effective and vigorous management and would open up the doors for vindictive or harassing litigation.) Other objectionable features are commented upon in the attachments.

S. 1438

The purpose clause of the National Security Act of 1947 (P. L. 80-253) states that: "In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States;...."

The Act then goes on to establish the Central Intelligence Agency and the position of the Director of Central Intelligence and in Section 102(c)(3) specifically charges the DCI with responsibility "...for protecting intelligence sources and methods from unauthorized disclosure...."

The CIA Act of 1949 (P. L. 81-110) grants the DCI authority to protect such sources and methods by exempting the Agency "...from the provisions... of any...law which require[s] the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency...."

S. 1438 raises a serious question of statutory interpretation concerning possible conflict between S. 1438 and the authorities and responsibilities now reposed in the Director by the provisions of law referred to above.

S. 1438 specifically authorizes adversary procedures which pose a serious paradox--the Agency must either remain silent in the face of unfounded allegations (with the alleged offending officer taking the consequences of the sanctions embodied in the bill), or it must divulge information which it is obligated by statute to protect, and disclosure of which might damage the national intelligence effort.

A detailed analysis and explanation of the adverse impact of the bill on the fundamental security interests of the Agency is attached. In sum they make clear that enactment of the bill without a full exemption for CIA and other members of the intelligence community such as NSA would be a most serious obstacle to the effective protection of intelligence sources and methods. Without a complete exemption, S. 1438 would seriously weaken the Agency's efforts to prevent penetration by a hostile intelligence service, to ensure that its employees are suitable in all respects for employment in this sensitive Agency, and in general make it much more difficult for the Director of Central Intelligence to discharge his responsibilities under existing law.

Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held by any officer of the Executive Branch, or by any outside parties of organizations to advise, instruct or indoctrinate any civilian employee in respect to any matter other than the performance of official duties.

Effect:

The language is so broad that it could prohibit an agency noting the attendance of an employee at meetings or gatherings of subversive and radical groups designed to undermine the Government of the United States.

Section 1 (d). Prohibits requiring an employee to report his unofficial outside activities duties unless reason to believe a conflict with official duties.

Effect:

This section is of primary importance to security agencies which for security reasons are concerned with outside activities of employees. Contacts with foreign officials are to be reported as a matter of information to protect the employee should the official be a member of an intelligence service. Similarly, security agencies must review publications and speeches of employees in advance to insure that there is no inadvertent disclosure of classified information.

Section 1 (e). Prohibits requiring or requesting any applicant or employee to submit to interrogation concerning: his personal relationship with any person related to him by blood or marriage, his religious beliefs or practices, or his attitude or conduct with respect to sexual matters. Prohibits the use of psychological testing into these same areas. These questions may be asked only by a physician to determine if an employee is suffering from mental illness. An employee may be informed of a specific charge of sexual misconduct and afforded an opportunity to refute the charge. Section 6 provides CIA and NSA the use of psychological testing in the proscribed areas on the basis of a personal finding by the Directors or their designees in each case that the information is necessary to protect the national security.

Effect:

Psychological testing in these areas is an important part of the total screening process to weed out applicants with undesirable traits. The exemption provided by Section 6 does not recognize that psychological screening is an integral part of the processing in every case.

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Section 1 (f). Prohibits the use of a polygraph test designed to elicit from an applicant or employee information as stated in Section 1 (e) above. Section 6 provides CIA and NSA use of the polygraph in these proscribed areas on the same basis as above.

Effect:

As with psychological testing, polygraph testing is of primary concern to security agencies who have found it to be an invaluable supplement to field investigations but uniquely effective in detecting certain latent types of security vulnerabilities. The exemption provided by Section 6 does not recognize that polygraph testing is an integral part of processing in every case.

Section 1 (i). Prohibits requesting any employee to disclose his total financial worth or liabilities. Excepted are employees who make final determinations with respect to claims requiring expenditure of federal funds. Also excepted are reports for determining liabilities or obligations imposed by law. CIA and NSA under Section 6, may inquire into the financial matters of an employee or applicant after a finding by the Directors or their designees in each case that the information is necessary to protect the national security.

Effect:

The broad language could prohibit inquiring into such matters as credit union loans, health insurance reimbursements, and other programs designed for the welfare of the employee, not directly related to national security and not covered by the exemption granted CIA and NSA.

Section 1 (j). Prohibits requesting financial disclosure from those employees excepted under the first proviso of subsection (i) above other than specific items tending to indicate a conflict of interest.

Effect:

Full financial disclosure assists the employee and the Government in making a difficult decision as to conflict of interest. Without full disclosure, this burden apparently is placed entirely upon the employee.

Section 1 (k). Prohibits requiring an employee, under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice if he so requests. In the case of CIA and NSA, counsel must be either another employee of, or approved by, the agency involved. This right inures to the employee when first questioned and does not require that the employee be accused of any wrongdoing before he may request presence of counsel or friend.

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Effect:

This section is of concern to all agencies and could lead to a serious deterioration of employee discipline. If a supervisor asks an employee for an explanation of consistent tardiness the employee is then entitled to counsel. This is of even more concern to the security agencies which may have to question an employee regarding activities related to security matters.

Section 1 (1). Makes it illegal to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise discriminate against an employee by reason of his refusal or failure to submit or comply with any requirement made unlawful by this act.

Effect:

This section, combined with Section 4 below, could seriously undermine the authority of any agency to conduct its business. For example, any employee being transferred could block the transfer with a suit alleging a violation of this act until such time as the case is brought to trial and it is proven that the transfer is for the benefit of the Government and is not a disciplinary action.

Section 4. Permits any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the act to bring a civil action in the district courts.

Effect:

This section with section 1 (1) is most serious. With the written consent of any person aggrieved, any employee organization may intervene in such action. This could establish a basis for jurisdictional conflicts between competing unions. Further, this section and Section 5 establish two new forums for an employee to contest his termination. Since court action is against the offending supervisor rather than the department or agency; the practical result is litigation between employees. This can expose supervisors to continued harassment by disgruntled employees resulting in a serious breakdown in discipline and reluctance of qualified employees to accept supervisory responsibility. With respect to applicants, this section has most serious implications. Any applicant who is not hired for the position he feels qualified to fill can initiate a suit. Further, subversives or radical groups could file suits for the sole purpose of harassment.

Section 5. Establishes an independent Board on Employees' Rights to provide applicants or employees with an alternative means of obtaining administrative relief from violations of the act.

Effect:

Creates the same potential for harassment as Section 4. If one loses his case before the Board, he can still take it to the courts.

Section 7. Requires an employee of CIA or NSA to give his employing agency 120 days to prevent threatened violation of the act, or redress an actual violation of the act, before proceeding before a court of the Board on Employees' Rights. Reaffirms statutory authority of Directors of CIA and NSA to terminate an employee.

Effect:

The requirement for notice does not apply to CIA or NSA applicants who have a right to bring immediate action. The potential for statutory conflict still exists should the Directors terminate an employee for cause and a court order reinstatement on a finding of a violation of the act.

Section 8. Recognizes the statutory authority of the Directors of CIA and NSA to protect or withhold certain information in the national interest.

Effect:

Information which the Directors determine must withhold may actually provide the only basis for refuting unfounded allegations. Since the sanctions in the bill are against the alleged offending employee, not the Directors, the net effect of withholding information is to make the charged employee bear the consequences, which can include loss of pay and termination. However, to disclose such information with its consequential damage to the national intelligence effort is even less acceptable.

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UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

Coffey
IN REPLY PLEASE REFER TO

August 10, 1972

YOUR REFERENCE

Honorable Emanuel Celler
Chairman, House Judiciary Committee
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

It is with grave concern that I write you concerning H. R. 12652, a bill to extend the life of the Commission on Civil Rights. This concern relates to the insertion entitled "Protection of Constitutional Rights of Government Employees," the language of which is identical to S. 1438, and previous bills which have received Senate approval.

The Civil Service Commission has reported to the Subcommittee on Employee Benefits of the House Post Office and Civil Service Committee on S. 1438 and similar bills, and has expressed strong objections to what we regard as major faults in the bills.

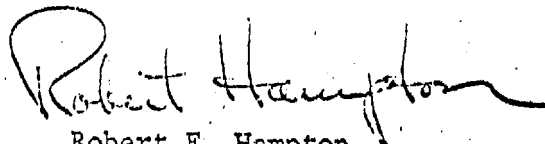
We do not, I can assure you, take any exception to the stated purpose of these bills, which is to protect civilian employees of the executive branch of the government in the enjoyment of their constitutional rights and to prevent unwarranted invasions of their privacy. We agree that under no circumstances should the price of Federal employment be relegation of the individual to "second class citizenship." But we feel very strongly that the proposed legislation goes beyond the protection of constitutional rights; that it would seriously infringe the proper right and responsibility of managers to see that the business of government is performed effectively and efficiently; that it is completely out of keeping with long-established principles of sound judicial administration in that it provides for summary judicial intervention into the management of the executive branch before the individual has exhausted his available administrative remedy, and that the establishment of a new agency, "The Board of Employee Rights" has a number of faults, the most notable of which is a conflict of statutory responsibilities with those of the Civil Service Commission.

While our reasons for objection are stated in greater detail in my testimony on H. R. 7199, H. R. 7969, and S. 1438 (copy attached), I should like to highlight just a few of the problems created by the present language. It would prevent a supervisor in a munitions storage depot from questioning an employee about forbidden smoking on the job

until the employee's attorney was present. It could bar inquiries about national security, or employee safety. It would, for all practical purposes, negate the ethical conduct program within the executive branch. It could preclude proper investigation of complaints of discrimination because of race, religion or national origin. By calling for a "prejudgment" by the Attorney General before he decided whether to defend an accused Federal supervisor in a lawsuit, it would tend to prejudice a fair hearing in court in the case of a supervisor who would not be defended by the Attorney General.

While we strongly feel that the defects are so serious that the "Protection of Constitutional Rights of Government Employees" insert to H. R. 12612 should not become law, I believe that the legitimate purposes of the insert could be achieved by a suitable, carefully drawn bill. The House Post Office and Civil Service Committee has already given much attention to, and held hearings on, this matter. I would strongly recommend therefore that the matter be divorced from the urgencies of H. R. 12652.

Sincerely yours,


Robert E. Hampton
Chairman

Enclosure

it can to drive South Vietnam into the sea and to force the United States into disagreeable and, if necessary, dishonorable actions in South Vietnam. That is all that the dikes are about.

I recognize Communist propaganda, whether it originates in Stockholm or Paris or the United States. These dams are not being bombed. There is an order by the President that they shall not be. When Hanoi establishes a SAM missile site or other military objective near the dikes, it is Hanoi which takes the risk that some accidental damage will be done to the dikes. There have been 12 such instances, none of which has been major.

We are going to continue to hear all this business about stopping bombing the dikes. I gather that at the previous convention, recently held, most of the issues raised by the delegates seemed to indicate that they were against lettuce and for dikes. Well, that is about as irrelevant and extraneous as a political convention can be; and to carry that politics on the floor of the Senate is clearly irrelevant and extraneous.

I simply make this point to indicate that it is about time we debated the genuine issues which affect the United States in foreign policy and in domestic policy and stop this extraneous and insane nonsense whereby Americans allege that the American Government is doing what an American President has forbidden to be done and which is not being done.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Pennsylvania (Mr. SCHWEIKER) is now recognized for not to exceed 10 minutes.

(The remarks that Mr. SCHWEIKER made when he introduced S. 3880, the National Diabetic Education and Detection Act, are printed in the Routine Morning Business section of the RECORD under Statements on Introduced Bills and Joint Resolutions.)

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from California (Mr. TUNNEY) is now recognized for not to exceed 15 minutes.

(The remarks of Mr. TUNNEY on Senate Resolution 342 dealing with bombing of dikes in North Vietnam and the remarks of Mr. HARRIS and Mr. KENNEDY on the same subject are printed in the Routine Morning Business section of the RECORD under Submission of a Resolution.)

Mr. ROBERT C. BYRD, Mr. President, will the Senator from Oklahoma yield his time to the able Senator from Massachusetts?

Mr. HARRIS, Mr. President, I yield my remaining time to the distinguished Senator from Massachusetts (Mr. KENNEDY).

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts is yielded the remaining time of the Senator from Oklahoma, and under the previous order, he has 15 minutes in his own right.

(The remarks of Mr. KENNEDY on the submission of an amendment to S. 2607

are printed in the Routine Morning Business section of the RECORD under Gun Control Act—amendment.)

EXTENSION OF THE COMMISSION ON CIVIL RIGHTS

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 955, H.R. 12652.

The ACTING PRESIDENT pro tempore (Mr. METCALF). The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 12652) to extend the life of this Commission on Civil Rights, to expand the jurisdiction of the Commission to include discrimination because of sex, to authorize appropriations for the Commission, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with amendments on page 1, after the enacting clause, insert:

TITLE I—EXTENSION OF LIFE OF COMMISSION ON CIVIL RIGHTS

At the beginning of line 5, strike out "That section" and insert "Sec. 101. Section"; on page 2, at the beginning of line 3, change the section number from "2" to "102"; at the beginning of line 12, change the section number from "3" to "103"; at the beginning of line 19, change the section number from "4" to "104"; at the beginning of line 23, change the section number from "5" to "105"; on page 3, at the beginning of line 10, change the section number from "6" to "106"; in line 15, after the word "of", strike out "\$6,500,000" and insert "\$5,500,000"; in line 17, after the word "of", strike out "\$8,500,000" and insert "\$7,000,000"; and, after line 17, insert a new title, as follows:

TITLE II—PROTECTION OF CONSTITUTIONAL RIGHTS OF GOVERNMENT EMPLOYEES

Sec. 201. It shall be unlawful for any officer of any executive department or any executive agency of the United States Government, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person seeking employment in the executive branch of the United States Government, to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears: *Provided, however*, That nothing contained in this subsection shall be construed to prohibit inquiry concerning the citizenship of any employee or person if his citizenship is a statutory condition of his obtaining or retaining his employment; *Provided further*, That nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin or citizenship of any such employee or person or of his forebears, when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States.

(b) To state or intimate, or to attempt to state or intimate, to any civilian employee of

the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the United States Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than the performance of official duties to which he is or may be assigned in the department or agency, or the development of skills, knowledge, or abilities which qualify him for the performance of such duties: *Provided, however*, That nothing contained in this subsection shall be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.

(c) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(d) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to make any report concerning any of his activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or unless there is reason to believe that the civilian employee is engaged in outside activities or employment in conflict with his official duties.

(e) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however*, That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however*, That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however*, That nothing contained in this subsection shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(f) To require or request, or attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to take any polygraph test designed to elicit from him information concerning his per-

sonal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

(g) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to support by personal endeavor or contribution of money or any other thing of value the nomination or the election of any person or group of persons to public Office in the Government of the United States or of any State, district, Commonwealth, territory, or possession of the United States, or to attend any meeting held to promote or support the activities or undertakings of any political party of the United States or of any State, district, Commonwealth, territory, or possession of the United States.

(h) To coerce or attempt to coerce any civilian employee of the United States serving in the department or agency to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or to make donations to any institution or cause of any kind: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, from calling meetings and taking any action appropriate to afford any civilian employee of the United States the opportunity voluntarily to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or voluntarily to make donations to any institution or cause.

(i) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household: *Provided, however,* That this subsection shall not apply to any civilian employee who has authority to make any final determination with respect to the tax or other liability of any person, corporation, or other legal entity to the United States, or claims which require expenditure of moneys of the United States: *Provided further, however,* That nothing contained in this subsection shall prohibit the Department of the Treasury or any other executive department or agency of the United States Government from requiring any civilian employee of the United States to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law.

(j) To require or request, or to attempt to require or request, any civilian employee of the United States embraced within the terms of the proviso in subsection (i) to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the performance of any of the official duties to which he is or may be assigned.

(k) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he so requests: *Provided, however,* That a civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the

employee serves, or by counsel who has been approved by the agency for access to the information involved.

(l) To discharge, discipline, demote, deny promotion to, relocate, reassign, or otherwise discriminate in regard to any term or condition of employment of, any civilian employee of the United States serving in the department or agency, or to threaten to commit any of such acts, by reason of the refusal or failure of such employee to submit to or comply with any requirement, request, or action made unlawful by this Act, or by reason of the exercise by such civilian employee of any right granted or secured by this Act.

SEC. 202. It shall be unlawful for any officer of the United States Civil Service Commission, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any executive department or any executive agency of the United States Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this Act.

(b) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commission from advising any civilian employee or applicant on a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(c) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

SEC. 203. It shall be unlawful for any commissioned officer, as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, to require or request, or to attempt to require or request, any civilian employee of the executive branch of the United States Government under his authority or subject to his supervision to per-

form any of the acts or submit to any of the requirements made unlawful by section 1 of this Act.

SEC. 204. Whenever any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, or any commissioned officer as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, violates or threatens to violate any of the provisions of section 1, 2, or 3 of this Act, any civilian employee of the United States serving in any department or agency of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf or in behalf of himself and others similarly situated, against the offending officer or person in the United States district court for the district in which the violation occurs or is threatened, or the district in which the offending officer or person is found, or in the United States District Court for the District of Columbia, to prevent the threatened violation or to obtain redress against the consequences of the violation. The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act. Such United States district court shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation. With the written consent of any person affected or aggrieved by a violation or threatened violation of section 1, 2, or 3 of this Act, any employee organization may bring such action on behalf of such person, or may intervene in such action. For the purposes of this section, employee organizations shall be construed to include any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of civilian employees of the United States and which has as one of its purposes dealing with departments, agencies, commissions, and independent agencies of the United States concerning the condition and terms of employment of such employees.

SEC. 205. (a) There is hereby established a Board on Employees' Rights (hereinafter referred to as the "Board"). The Board shall be composed of three members, appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member as chairman. No more than two members of the Board may be of the same political party. No member of the Board shall be an officer or employee of the United States Government.

(b) The term of office of each member of the Board shall be five years, except that (1) of those members first appointed, one shall serve for five years, one for three years, and one for one year, respectively, from the date of enactment of this Act, and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) Members of the Board shall be compensated at the rate of \$75 a day for each day spent in the work of the Board, and shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence, as authorized by section 5703 of title 5, United States Code.

(d) Two members shall constitute a quorum for the transaction of business.

(e) The Board may appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures as may be necessary to carry out its functions.

(f) The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

(g) The Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this Act and to conduct a hearing on each such complaint. Within ten days after the receipt of any such complaint, the Board shall furnish notice of the time, place, and nature of the hearing thereon to all interested parties. The Board shall render its final decision with respect to any complaint within thirty days after the conclusion of its hearing thereon.

(h) Officers or representatives of any Federal employee organization in any degree concerned with employment of the category in which any alleged violation of this Act occurred or is threatened shall be given an opportunity to participate in each hearing conducted under this section, through submission of written data, views, or arguments, and in the discretion of the Board, with opportunity for oral presentation. Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or suffering loss in leave or pay; and all such employees shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such participation shall be held and considered to be Federal employment for all purposes.

(i) Insofar as consistent with the purposes of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, relating to the furnishing of notice and manner of conducting agency hearings, shall be applicable to hearings conducted by the Board under this section.

(j) If the Board shall determine after hearing that a violation of this Act has not occurred or is not threatened, the Board shall state its determination and notify all interested parties of such determination. Each such determination shall constitute a final decision of the Board for purposes of judicial review.

(k) If the Board shall determine that any violation of this Act has been committed or threatened by any civilian officer or employee of the United States, the Board immediately (1) issue and cause to be served on such officer or employee an order requiring such officer or employee to cease and desist from the unlawful act or practice which constitutes a violation, (2) endeavor to eliminate any such unlawful act or practice by informal methods of conference, conciliation, and persuasion, and (3) may—

(A) (1) in the case of the first offense by any civilian officer or employee of the United States, other than any officer appointed by the President, by and with the advice and consent of the Senate, issue an official reprimand against such officer or employee or order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed

fifteen days, and (ii) in the case of a second or subsequent offense by any such officer or employee, order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed thirty days or order the removal of such officer or employee from such position or office; and

(B) in the case of any offense by any officer appointed by the President, by and with the advice and consent of the Senate, transmit a report concerning such violation to the President and the Congress.

(1) If the Board shall determine that any violation of this Act has been committed or threatened by any officer of any of the Armed Forces of the United States, or any person purporting to act under authority conferred by such officer, the Board shall (1) submit a report thereon to the President, the Congress, and the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice which constitutes such a violation by informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. Thereupon such person shall take immediate steps to dispose of the matter under chapter 47 of title 10, United States Code Uniform Code/Military Justice).

(m) Any party aggrieved by any final determination or order of the Board may institute, in the district court of the United States for the judicial district wherein the violation or threatened violation of this Act occurred, or in the United States District Court for the District of Columbia, a civil action for the review of such determination or order. If any such action, the court shall have jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board which is under review, or (2) require the Board to make any determination or order which it is authorized to make under subsection (k), but which it has refused to make. The reviewing court shall set aside any finding, conclusion, determination, or order of the Board as to which complaint is made which is unsupported by substantial evidence on the record considered as a whole.

(n) The Board shall submit, not later than March 31 of each year, to the Senate and House of Representatives, respectively, a report on its activities under this section during the immediately preceding calendar year, including a statement concerning the nature of all complaints filed with it, its determinations and orders resulting from hearings thereon, and the names of all officers or employees of the United States with respect to whom any penalties have been imposed under this section.

(o) There are authorized to be appropriated sums necessary, not in excess of \$100,000 to carry out the provisions of this section.

SEC. 206. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test, designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or his designee or the Director of the National Security Agency or his designee makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security.

SEC. 207. No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and

no individual or organization acting in behalf of such employee, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency one hundred and twenty days from the date of such complaint to prevent the threatened violation or to redress the actual violation: *Provided, however,* That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under section 403(c), of title 50, United States Code, and any authorities available to the National Security Agency under section 833 of title 50, United States Code, to terminate the employment of any employee.

SEC. 208. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or Executive order shall be conclusive and no such information shall be admissible in evidence in any interrogation under section 1(k) or in any civil action under section 4 or in any proceeding or civil action under section 5.

SEC. 209. This Act shall not be applicable to the Federal Bureau of Investigation.

SEC. 210. Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: *Provided, however,* That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States district court or in proceedings before the Board on Employee Rights: *And provided further,* That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section.

SEC. 211. If any provision of this Act or the application of any provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

LEGISLATIVE HISTORY OF TITLE II OF H.R. 12652

Mr. ERVIN. Mr. President, title II of H.R. 12652 is identical to S. 1438 which was approved by the Senate by unanimous consent last December. Its provisions are designed to protect the constitutional rights of employees of the executive branch and to prevent unwarranted governmental invasions of their privacy. I proposed the addition of this title to the House bill to extend the life of the Civil Rights Commission to afford the Senate another chance to express its desire to protect the privacy of millions of citizens who now work for the Government or who may apply to work for it.

The December vote was not the first time the Senate expressed itself on this issue and sent to the House this measure containing privacy guarantees.

I introduced this bill in 1966 in the 89th Congress. Hearings were conducted and staff studies were made on the problems. In the 90th Congress I rein-

roduced the bill with 54 cosponsors, and it was unanimously and favorably reported by the Committee on the Judiciary as S. 1035. On September 13, 1967, the Senate approved it by an impressive vote of 79 to 4, a vote that totaled 90 to 4 by the time absentees were recorded. The bill was then referred to the House Post Office and Civil Service Committee which did not report on it in the 90th Congress.

In the 91st Congress, I reintroduced the identical bill as S. 782 with 54 cosponsors. Again the subcommittee considered it, held hearings, conducted investigations, and reported the bill unanimously. The Judiciary Committee repeated their support for the bill and again recommended that the bill be enacted.

True to the sentiments of their constituents and to the extensive editorial support for this privacy bill, Members of the Senate again approved the measure, this time by unanimous consent. The bill was again sent to the House Post Office and Civil Service Committee whose subcommittee conducted some hearings. I appeared before that subcommittee and reported on the complaints and findings in the Constitutional Rights Subcommittee. No further action was taken by the House committee in that Congress.

In 1971, for the third time, I introduced the employee "bill of rights" as S. 1438, with 50 cosponsors.

For the third time, the subcommittee and the Committee on the Judiciary unanimously recommended that it be enacted. And by unanimous consent, the Senate approved this measure for the third time. For the third Congress, the House has not acted.

There has been widespread support for this measure for many years.

I believe Americans today fear for their privacy and their constitutional freedoms. This bill will provide some minimum statutory guarantees for millions of citizens who work for the executive branch of the Federal Government or who may apply to work for it.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 92-1006), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

AMENDMENTS

1. Amendment No. 1 provides that Section 106, lines 11 through 15, page 3, be deleted and the following inserted in lieu thereof:

SEC. 106. For the purposes of carrying out this Act, there is authorized to be appropriated for the fiscal year ending June 30, 1973, the sum of \$5.5 million, and for each fiscal year thereafter through June 30, 1978, the sum of \$7.0 million.

The amendment to Section 106 of the bill reduces the amounts of appropriations authorized for the Commission in fiscal years 1973 through 1978, as provided in the House bill.

2. Amendment No. 2 adds Title II to the bill, which incorporates the provisions of S.

1438, a bill approved by the Committee in the First Session as an Act to protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

TITLE I—LEGISLATIVE HISTORY

President Nixon in his State of the Union message of January 20, 1972, called for a five-year extension of the Civil Rights Commission and the expansion of its jurisdiction to include discrimination based on sex.

The Commission then drafted its proposals which were introduced in the House (H.R. 12652) on January 26, 1972, and in the Senate (S. 3121) on February 3, 1972. The bills were identical, calling for an extension of the Commission for five years, an expansion of its jurisdiction to include sex discrimination, and an open-ended appropriation authorization.

Subcommittee No. 5 of the House Judiciary Committee held hearings on H.R. 12652 on February 24, 1972. At the conclusion of the hearings, the subcommittee replaced the open-ended authorization with an authorization ceiling of \$6.5 million for fiscal year 73 and \$8.5 million for fiscal years 74-78. The bill as amended was passed by the House of Representatives on May 1, 1972.

S. 3121 and H.R. 12652 were referred to the Senate Judiciary Committee. The Subcommittee on Constitutional Rights held hearings on the bills on June 16, 1972. Testimony from the Commission was received in support of H.R. 12652. Also testifying in support of the bill was the national director of the National Federation of Business and Professional Women's Clubs. Statements of support were submitted by three Senators, The Women's Equity Action League, The League of Women Voters of the United States, The Leadership Conference on Civil Rights, The Duluth Business and Professional Women's Club, and the Pennsylvania Commission on the Status of Women. No testimony or statements were received in opposition to the bill. The aforementioned communications can be found in the printed text of the hearings. The bill as amended was reported by the subcommittee by a divided vote.

TITLE AS AMENDED

Title I has three primary purposes, and three secondary ones.

Section 4 provides that the Commission will make its final report to the President and to the Congress by June 30, 1978, rather than January 31, 1973. This, in effect, extends the life of the Commission for five years and five months.

Section 3 expands the jurisdiction of the Commission to include discrimination based on sex. At present, the Commission's jurisdiction is limited to investigating denials of equal protection based on race, color, religion, or national origin.

Section 6 as amended provides a ceiling on appropriations of \$5.5 million for fiscal year 73, and \$7.0 million for the four succeeding fiscal years. The bill as originally introduced contained an open-ended authorization for "such sums as are necessary to carry out the provisions of this Act." The bill was amended in the House, however, to provide a ceiling of \$6.5 million in fiscal year 73 and \$8.5 million in the four succeeding fiscal years. The amended provision thus represents a reduction in the authorization approved by the House of \$1 million in fiscal year 73 and \$1.5 million in each of the succeeding four fiscal years.

Sections 1, 2, and 5 of the bill provide for increased compensation for witnesses, commissioners, and consultants, respectively. Witnesses will be paid at the rate paid witnesses in federal courts. Commissioners will be compensated at the rate of level IV of the Federal Executive Salary Schedule for each day spent in the work of the Commission,

and consultants will be paid at a rate not to exceed the daily rate paid a GS-15. These provisions are comparable to those now in effect in other government agencies.

STATEMENT

The Commission on Civil Rights was created in 1957 as an independent fact-finding agency with a two-year life span. Its power was limited to conducting studies and making recommendations to the President and Congress concerning denials of equal protection based on race, color, religion, and national origin.

The Commission has since been extended five times by the Congress. Its staff and program have expanded, and its appropriation authorization has steadily climbed to its present level of \$4.0 million for fiscal year 1972.

In the early years of its existence, the Commission concerned itself largely with the problems facing black Americans. Recently, however, it has turned its attention to other minority groups, most notably Indians and Mexican Americans. More than 60% of its recommendations have been enacted into law.

The Committee is of the view that there is a continuing need for the Commission to appraise the policies of the federal government with respect to civil rights and to serve as a reliable source of information for future legislative proposals.

The Committee also favors the inclusion of sex discrimination as a logical expansion of the Commission's jurisdiction. The Commission is already empowered to investigate denials of equal protection on other grounds, and has a working structure designed to cope with such problems. The Committee hopes, however, that the Commission's assumption of new jurisdiction will not signify a slackening of the Commission's efforts to deal with problems of neglected smaller minorities. The Committee furthermore hopes that particular attention will be given to the special problems of minority women when the Commission turns its attention to the problems of sex discrimination in general. In short, the grant of additional jurisdiction should not be allowed to cloud the other important concerns of the Commission.

Finally, the Committee favors the fiscal limits of \$5.5 million in fiscal year 73 and \$7.0 million in the succeeding four fiscal years as a more realistic estimate of the Commission's costs than those contained in the House bill. The authorization of the Commission for fiscal year 72 was \$4.0 million. The limit of \$5.5 million in fiscal year 73 represents a 37.5% increase over fiscal year 72; the \$7.0 million, a 75% increase over fiscal year 72. These authorizations represent, the Committee feels, amounts reasonably calculated to allow the Commission to carry out its responsibilities.

The Committee has already requested an increase in the appropriations for fiscal year 73 to \$4.8 million without the new jurisdiction to cover sex discrimination. The authorization called for in the Committee amendment provides \$7 million for fiscal year 1973 in addition to this request to allow the Commission to begin its new work in the area of sex discrimination and a contemplated project on Asian-Americans. The \$7.0 million figure for fiscal years 74 through 78 makes it possible for the Commission to expand its efforts in the area of sex discrimination and allows for future cost increases to its total program.

COSTS

In accordance with Section 252 of the Legislative Reorganization Act of 1970, the Committee estimates the costs of H.R. 12652, as amended, in fiscal year 1973 will be \$1.5 million more than the appropriation of \$4.0 million already authorized. If the Civil Rights Commission is extended until December 31, 1978, as provided by the bill, the annual cost is estimated to be \$7.0 million

for each of the fiscal years 1974 through 1978.

The printed hearings contain a detailed projection made by the Commission of its program for the next five years and its estimated costs.

TITLE II—PROTECTING PRIVACY AND THE RIGHTS OF FEDERAL INCOME

Title II is identical to the provisions of S. 1438 which was approved by the Committee without amendment on December 6, 1971, and which was passed by the Senate by unanimous consent on December 8. It is also identical to S. 782 of the 91st Congress as unanimously reported by the Committee and unanimously approved by the Senate. This title is designed to protect civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

The language of the Committee report on the provisions of S. 1438 is reprinted below as adopted by the Committee.

The references in the report on Title II are to the numbered provisions of S. 1438 as formerly approved by the Committee.

The section references in the legislative analysis of Title II accord with the numbered section of the parent bill.

PURPOSE

The purpose of Title II is to prohibit indiscriminate executive branch requirements that employees and, in certain instances, applicants for Government employment disclose their race, religion, or national origin; attend Government-sponsored meetings and lectures or participate in outside activities unrelated to their employment; report on their outside activities or undertakings unrelated to their work; submit to questioning about their religion, personal relationships or sexual attitudes through interviews, psychological tests, or polygraphs; support political candidates or attend political meetings. The bill would make it illegal to coerce an employee to buy bonds or make charitable contributions. It prohibits officials from requiring him to disclose his own personal assets, liabilities, or expenditures, or those of any member of his family unless, in the case of certain specified employees, such items would tend to show a conflict of interest. It would provide a right to have a counsel or other person present, if the employee wishes, at an interview which may lead to disciplinary proceedings. It would accord the right to a civil action in a Federal court for violation or threatened violation of the act, and it would establish a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act and to determine and administer remedies and penalties.

STATEMENT

The committee has found, a threefold need for this legislation. The first is the immediate need to establish a statutory basis for the preservation of certain rights and liberties of those who work for government now and those who will work for it in the future. The bill, therefore, not only remedies problems of today but looks to the future, in recognition of the almost certain enlargement of the scope of Federal activity and the continuing rise in the number of Americans employed by their Federal Government or serving it in some capacity.

Second, the bill meets the Federal Government's need to attract the best qualified employees and to retain them. As the former Chairman of the Civil Service Commission, Robert Ramspeck, testified:

"Today, the Federal Government affects the lives of every human being in the United States. Therefore, we need better people today, better qualified people, more dedicated people, in Federal service than we ever needed before. And we cannot get them if you are

going to deal with them on the basis of suspicion, and delve into their private lives, because if there is anything the average American cherishes, it is his right of freedom of action, and his right to privacy. So I think this bill is hitting at an evil that has grown up, maybe not intended, but which is hurting the ability of the Federal Government to acquire the type of personnel that we must have in the career service."

Third is the growing need for the beneficial influence which such a statute would provide in view of the present impact of Federal policies, regulations and practices on those of State and local government and of private business and industry. An example of the interest demonstrated by governmental and private employers is the following comment by Allan J. Graham, secretary of the Civil Service Commission of the city of New York:

"It is my opinion, based on over 25 years of former Government service, including some years in a fairly high managerial capacity, that your bill, if enacted into law, will be a major step to stem the tide of 'Big Brotherism,' which constitutes a very real threat to our American way of life.

"In my present position as secretary of the Civil Service Commission of the city of New York, I have taken steps to propose the inclusion of several of the concepts of your bill into the rules and regulations of the city civil service commission."

Passage of the bill will signify congressional recognition of the threats to individual privacy posed by an advanced technology and by increasingly more complex organizations. Illustrating these trends is the greatly expanded use of computers and governmental and private development of vast systems for the efficient gathering of information and for data storage and retrieval. While Government enjoys the benefit of these developments, there is at the same time an urgent need for defining the areas of individual liberty and privacy which should be exempt from the unwarranted intrusions facilitated by scientific techniques.

As Prof. Charles Reich of Yale Law School has stated, this bill "would be a significant step forward in defining the right of privacy today."

"One of the most important tasks which faces the Congress and State legislatures in the next decade is the protection of the citizen against invasion of privacy," states Prof. Stanley Anderson of the University of California, Santa Barbara. "No citizens," in his opinion, "are in more immediate danger of incursion into private affairs than Government employees. When enacted the bill will provide a bulwark of protection against such incursions."

The bill is based on several premises which the subcommittee investigation has proved valid for purposes of enacting this legislation. The first is that civil servants do not surrender the basic rights and liberties which are their due as citizens under the Constitution of the United States by their action in accepting Government employment. Chief among these constitutional protections is the first amendment, which protects the employee to privacy in his thoughts, beliefs and attitudes, to silence in his action and participation or his inaction and nonparticipation in community life and civic affairs. This principle is the essence of constitutional liberty in a free society.

The constitutional focus of the bill was emphasized by Senator Ervin in the following terms when he introduced S. 1035, on February 21, 1967:

"If this bill is to have any meaning for those it affects, or serve as a precedent for those who seek guidelines in those matters, its purpose must be phrased in constitutional terms. Otherwise its goals will be lost.

"We must have as our point of reference the constitutional principles which guide every official act of our Federal Government.

I believe that the Constitution, as it was drafted and as it has been implemented, embodies a view of the citizen as possessed of an inherent dignity and as enjoying certain basic liberties. Many current practices of Government affecting employees are unconstitutional; they violate not only the letter but the very spirit of the Constitution.

"I introduced this bill originally because I believe that, to the extent it has permitted or authorized unwarranted invasion of employee privacy and unreasonable restrictions on their liberty, the Federal Government has neglected its constitutional duty where its own employees are concerned, and it has failed in its role as the model employer for the Nation.

"Second, although it is a question of some dispute, I hold that Congress has a duty under the Constitution not only to consider the constitutionality of the laws it enacts, but to assure as far as possible that those in the executive branch responsible for administering the laws adhere to constitutional standards in their programs, policies, and administrative techniques."

The committee believes that it is time for Congress to forsake its reluctance to tell the executive branch how to treat its employees. When so many American citizens are subject to unfair treatment, to being unreasonably coerced or required without warrant to surrender their liberty, their privacy, or their freedom to act or not to act, to reveal or not to reveal information about themselves and their private thoughts and actions, then Congress has a duty to call a statutory halt to such practices. It has a duty to remind the executive branch that even though it might have to expend a little more time and effort to obtain some favored policy goal, the techniques and tools must be reasonable and fair.

Each section of the bill is based on evidence from many hundreds of cases and complaints showing that generally in the Federal service, as in any similar organizational situation, a request from a superior is equivalent to a command. This evidence refutes the argument that an employee's response to a superior's request for information or action is a voluntary response, and that an employee "consents" to an invasion of his privacy or the curtailment of his liberty. Where his employment opportunities are at stake, where there is present the economic coercion to submit to questionable practices which are contrary to our constitutional values, then the presence of consent or voluntarism may be open to serious doubt. For this reason the bill makes it illegal for officials to "request" as well as to "require" an employee to submit to certain inquiries or practices or to take certain actions.

Each section of the bill reflects a balancing of the interests involved: The interest of the Government in attracting the best qualified individuals to its service; and its interest in pursuing laudable goals such as protecting the national security, promoting equal employment opportunities, assuring mental health, or conducting successful bond-selling campaigns. There is, however, also the interest of the individual in protection of his rights and liberties as a private citizen. When he becomes an employee of his Government, he has a right to expect that the policies and practices applicable to him will reflect the best values of his society.

The balance of interests achieved assures him this right. While it places no absolute prohibition on Government inquiries, the bill does assure that restrictions on his rights and liberties as a Government employee are reasonable ones.

As Senator Bible stated:

"There is a line between what is Federal business and what is personal business, and Congress must draw that line. The right of privacy must be spelled out."

August 4, 1972

The weight of evidence, as Senator Fong has said: "points to the fact that the invasions of privacy under threats and coercion and economic intimidation are rampant in our Federal civil service system today. The degree of privacy in the lives of our civil servants is small enough as it is, and it is still shrinking with further advances in technical know-how. That these citizens are being forced by economic coercion to surrender this precious liberty in order to obtain and hold jobs is an invasion of privacy which should disturb every American. I, therefore, strongly believe that congressional action to protect our civil servants is long overdue."

The national president of the National Association of Internal Revenue Employees, Vincent Connery, told the subcommittee of this proposal in the 89th Congress:

"Senate bill 3779 is soundly conceived and perfectly timed. It appears on the legislative scene during a season of public employee unrest, and a period of rapidly accelerating demand among Federal employees for truly first-class citizenship. For the first time within my memory, at least, a proposed bill holds out the serious hope of attaining such citizenship. S. 3779, therefore, amply deserves the fullest support of all employee organizations, both public and private, federation affiliated, and independent alike."

Similar statements endorsing the broad purpose of the bill were made by many others, including the following witnesses:

John F. Griner, national president, American Federation of Government Employees.
E. C. Hallbeck, national president, United Federation of Postal Clerks.

Jerome Keating, president, National Association of Letter Carriers.

Kenneth T. Lyons, national president, National Association of Government Employees.

John A. McCart, operations director, Government Employees Council of AFL-CIO.

Hon. Robert Ramspeck, former Chairman, Civil Service Commission.

Vincent Jay, executive vice president, Federal Professional Association.

Francis J. Speh, president, 14th District Department, American Federation of Government Employees.

Lawrence Speiser, director, Washington office, American Civil Liberties Union.

Nathan Wolkowir, national president, National Federation of Federal Employees.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Florida (Mr. CHILES) was to have been recognized at this time.

Mr. ROBERT C. BYRD, Mr. President, I suggest the absence of a quorum, without prejudice to the Senator from Florida.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

ORDER OF BUSINESS

The PRESIDING OFFICER. At this time, under the previous order, the Chair recognizes the distinguished Senator from Florida (Mr. CHILES) for not to exceed 15 minutes.

(The remarks of Mr. CHILES on the introduction of S. 3881 are printed in the

Record under Statements on Introduced Bills and Joint Resolutions.)

ROLLING STOCK UTILIZATION AND FINANCING ACT OF 1972

The PRESIDING OFFICER. At this time, in accordance with the previous order, the Chair lays before the Senate S. 1729, which the clerk will report.

The assistant legislative clerk read as follows:

Calendar Order No. 932 (S. 1729), a bill to supply general service freight cars to meet the needs of commerce, users, shippers, national defense, and the consuming public.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce with an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as the "Rolling Stock Utilization and Financing Act of 1972".

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TITLE I—NATIONAL ROLLING STOCK INFORMATION SERVICE AND FEDERAL RAILROAD EQUIPMENT OBLIGATION INSURANCE FUND

PURPOSES

Sec. 101. The Congress hereby declares that the purposes of this Act are—

(a) to improve the utilization and distribution of rolling stock to meet the needs of commerce, users, shippers, the national defense, and the consuming public;

(b) to assist railroads in acquiring additional rolling stock to provide fast and ex-

peditious service to meet the increasing demands of the Nation's economy now and in the years to come; and

(c) to assist in achieving full employment by insuring adequate equipment necessary to transport the products of American industry.

DEFINITIONS

Sec. 102. For the purposes of this Act—

(1) "Authority" means the Rolling Stock Authority which may also be known as RSA.

(2) "Board" means the Federal Railroad Equipment Obligation Insurance Board.

(3) "Car-pooling company" means a company that furnishes rolling stock to three or more railroads on a pooling basis.

(4) "Directors" means the Board of Directors of the Authority.

(5) "Equipment obligations" means bonds, notes, conditional sale agreements, equipment trust certificates, leases, and other obligations issued or guaranteed by railroads or car-pooling companies to finance or refinance rolling stock.

(6) "Holder" means the holder of an equipment obligation, except that where a bank or trust company is acting as agent or trustee for the holder of the equipment obligation, the bank or trust company shall be deemed to be the holder.

(7) "Obligor" includes the original borrower under an equipment obligation and his successors and assigns approved by the Board. An obligor must be a railroad or car-pooling company.

(8) "Railroad" means a common carrier by railroad, as defined in section 1(3) of the Interstate Commerce Act, as amended, and includes, where determined appropriate by the Board, any railroad controlled by a railroad within the meaning of section 1(3)(b) of the Interstate Commerce Act.

(9) "Rolling stock" means any type of new or rebuilt general service railroad freight car whose use is not confined to a specialized purpose by special equipment and design or other limiting features, cabooses, and standard gage locomotives. The Board may designate what types of freight cars are general service freight cars, including, but not limited to, boxcars, gondolas, open top and covered hopper cars, and flatcars.

(10) "Secretary" means the Secretary of Transportation.

NATIONAL ROLLING STOCK INFORMATION SYSTEM

Sec. 103. (a) The Secretary is authorized to design a national rolling stock information system and to contract with and provide technical and financial assistance to individual railroads or a group of railroads working together, including the sharing of costs and the funding in part of demonstration projects, to assist in the establishment of a national rolling stock information system. Such national rolling stock information system shall use computer and communication techniques and equipment which will facilitate equitable distribution and efficient and economical utilization of rolling stock. Such system shall be capable of furnishing information about all rolling stock owned directly or indirectly by railroads and car-pooling companies with respect to physical characteristics, origin, destination, location, availability for future loadings, and such other information as the Secretary determines to be useful for the equitable distribution and efficient and economical utilization of rolling stock. The Secretary shall consult with shippers, railroads, and the Interstate Commerce Commission before finally approving the design of the system. Information shall be available to shippers, railroads, the Secretary, the Interstate Commerce Commission, and other members of the public subject to such rules as the Interstate Commerce Commission shall prescribe to insure the confidentiality of certain types of competitive information supplied for use in connection with the system.